



STATE OF MISSISSIPPI
OFFICE OF THE GOVERNOR

HALEY BARBOUR
GOVERNOR

August 30, 2011

Ex Parte

Filed via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Universal Service Reform; WC Docket Nos. 10-90, 07-135, 05-337, 03-109;
CC Docket Nos. 01-92, 96-45; and GN Docket No. 09-51

Dear Ms. Dortch:

On August 29 and August 30, 2011, Vicki Helfrich, Strategic Planning Coordinator for the Mississippi Department of Information Technology Services, and I met with Margaret McCarthy, Legal Advisor to Commissioner Copps, Erin McGrath, Acting Legal Advisor to Commissioner McDowell, Trent Harkrader, Chief Telecommunications Access Policy Division, Amy Bender, Deputy Chief Telecommunications Access Policy Division, Patrick Halley, Legal Advisor Wireline Competition Bureau and Katie King, Special Counsel Wireline Competition Bureau.

During the meeting, we discussed the importance of maintaining the current state role in eligible telecommunications carrier designations and annual certifications. We discussed the Mississippi Public Service Commission's designation/certification process and the resulting increase of access of services to rural Mississippians. We urged the Commission to consider the vital role states currently play and encouraged the continuation of this partnership as the Commission considers universal service reform.

Also, we expressed concern about the ability to sustain infrastructure that has been deployed by eligible telecommunications carriers in high-cost areas utilizing universal service funding. Specifically, we discussed the need for time to review the ABC Plan and its potential impact on Mississippi.

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Finally, we addressed the problems with utilizing census block data to determine where universal service funding should be used to deploy broadband infrastructure.

The Office of the Governor of the State of Mississippi files this *ex parte* notice pursuant to Section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in blue ink that reads "Nicole Stofer". The signature is written in a cursive, flowing style.

Nicole Stofer
Senior Advisor

Mississippi Public Service Commission



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UNION CHURCH - FIRST DISTRICT
LEONARD L. BENTZ, Vice-Chairman
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August 22, 2011

Julius Genachowski, Chairman
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
Washington, DC 20554

Re: Universal Service Reform and the Role of the States; WC Docket Nos.
10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; and GN Docket No.
09-51

Dear Chairman Genachowski:

We write to you concerning the Federal Communication Commission's current effort to reform the Universal Service Fund. In particular, we are concerned that current reform proposals would improperly interfere with or entirely undo the critical role that states play in determining the eligibility and distribution of Universal Service Support.

In the 1996 Telecommunications Act, Congress recognized that each state may face unique circumstances in assuring the law's universal service goal: that all Americans have access to reasonably comparable telecommunications capabilities at reasonably comparable prices.¹ As a result of this recognition, states were permitted to play an important role in determining carriers' eligibility for the receipt of USF support. In Mississippi, the Mississippi Public Service Commission fulfills this role of carrying out the essential public interest analysis before awarding any carrier USF eligibility.

The current system has proven effective. In our state, Universal Service support has provided Mississippians' near ubiquitous access to wireless technology -- spurring innovation and economic growth through new businesses, increased access to educational and healthcare tools, and otherwise supporting a Mississippi economy that is strong enough to compete in today's challenging circumstances.

We, therefore, believe the FCC should reject any Universal Service reform proposal that would preempt a state's role in determining USF eligibility. States should continue to have a decisive role in determining which telecommunications carriers are eligible to receive USF support within their borders.

¹ See, The Communications Act of 1934, as amended by the Telecommunications Act of 1996, § 254(b).

The reform proposal recently put forward by the largest wireline providers (the "ABC Plan") attempts to limit the states' authority to designate carriers as eligible to receive USF support and to distribute USF support.

The ABC Plan proposes to grant each incumbent carrier (ILEC) a right of first refusal of universal service support if it has made high-speed internet service available to more than 35-percent (35%) of the service locations in its wire center. By granting ILECs this right of first refusal, the ABC Plan proposal would effectively remove a state's ability to (1) designate carriers as eligible to receive funding and (2) perform the necessary public interest analysis. The right of first refusal would give ILECs a unilateral right to exclude competitors from USF support (or the proposed "Connect America Fund" support) without any state participation or input.

The ABC Plan would also eliminate states' universal service designation authority. Because the FCC proposes to transition the Universal Service Fund to provide support for broadband service and because broadband is classified as an "information service" by the FCC, supporters of the ABC Plan assert that the FCC will have to exercise exclusive jurisdiction over the evaluation and determination of which broadband providers should be eligible for post-reform USF support.

As the National Association of Regulatory Utility Commissioners recently noted in comments regarding the states long history as a source of innovation when dealing with USF issues, any efforts at reform should not diminish the role of the states.²

The Mississippi Public Service Commission could not agree more and fully supports NARUC's recommendation that the FCC should not undermine the role and authority of the states in the distribution of Universal Service with preemptive measures that are likely to result in unfair and narrow decisions that are not in the public interest or might otherwise result in unnecessary legal conflict.

Sincerely,

Mississippi Public Service Commission



Lynn Posey, Chairman



Leonard Bentz, Vice-Chairman



Brandon Presley, Commissioner

cc: Commissioner Mignon Clyburn
Commissioner Michael Copps
Commissioner Robert McDowell

² See Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, FCC, (July 20, 2011).



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August 22, 2011

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

*Re: Universal Service Reform; WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket
Nos. 01-92, 96-45; and GN Docket No. 09-51*

Dear Chairman Genachowski:

Mississippi's wireless experience is a model for the rest of the nation. Despite being substantially rural,¹ more than thirty-five (35%) of Mississippi's one-million households are wireless-only – the highest percentage of any state.² Adoption of and reliance on wireless requires access to the technology. In Mississippi and throughout much of rural America, that access is fueled by the Universal Service Fund and the competition it allows.

While the Commission's current efforts to make the Universal Service Fund more efficient are commendable, the FCC must take every precaution to avoid limiting competition and reducing rural Americans' access to wireless technology and mobile broadband.

As provided in the 1996 Telecommunications Act, the fundamental goal of Universal Service is to assure that all Americans have access to reasonably comparable telecommunications capabilities at reasonably comparable prices.³ In my state, Universal Service support has provided Mississippians' near ubiquitous access to wireless technology and served to catalyze innovation and efficiencies that grow new businesses, increase access to educational tools and healthcare technologies, and otherwise strengthen Mississippians' ability to compete and thrive at home and in the global economy.

The competitive pressures created by the current Universal Service system give Mississippians the opportunity to choose the technology and network that is best-suited to their personal needs or their business' needs – an opportunity comparable to that enjoyed by consumers in the nation's largest metropolitan areas. But proposed reforms reflected in the Commission's recent

¹ Per the 2010 Census, Mississippi has an average of fewer than 64 people per square mile.

² Arkansas has a similar percentage of wireless-only households. See, Gahran, A., *Arkansas, Mississippi top U.S. in Wireless-only Households*, CNN.com (April 20, 2011): <http://bit.ly/qAS1wy>.

³ See, The Communications Act of 1934, as amended by the Telecommunications Act of 1996, § 254(b).

Public Notice, such as proposals to limit USF support to only one carrier or class of carrier in a given area, threaten to undermine competition, stifle access and slow broadband adoption (wireless or otherwise) in Mississippi and other rural parts of the United States.

On behalf of more than a million Mississippians who rely daily and exclusively on wireless technology to communicate with loved-ones, conduct business, receive critical healthcare or further their education, I urge the Commission not to rush through a harmful Universal Service reform proposal in order to meet an arbitrary deadline.

Instead, the Commission should carefully and deliberately pursue a balanced approach that reforms the current Universal Service system by reducing cost, preserving choice, promoting the deployment of advanced technology, and maximizing competition in order to deliver the greatest benefits to Mississippi's and America's consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Haley Barbour", with a long horizontal flourish extending to the right.

Haley Barbour

cc: Commissioner Mignon Clyburn
Commissioner Michael Copps
Commissioner Robert McDowell

ELIGIBLE TELECOMMUNICATIONS CARRIER ("ETC") CHECKLIST

I. Initial ETC Designation

A. Eligibility Requirements¹

1. Commitment and Ability to Provide the Supported Services

(a) Required Services

ETC applicants must establish ability to provide certain services using either their own facilities or a combination of their own facilities and resale of another carrier's services, pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.101, as follows:

- (i) Voice grade access to the public switched network;
- (ii) Access to free-of-charge "local usage," defined as an amount of minutes of use of exchange service;
- (iii) Dual-tone multi-frequency signaling or its functional equivalent;
- (iv) Single-party service or its functional equivalent;
- (v) Access to emergency services;
- (vi) Access to operator services;
- (vii) Access to directory assistance;
- (viii) Access to interexchange services; and
- (ix) Toll limitation services for qualifying low-income customers.

(b) Supporting Documentation

ETC applicants must also comply with the following:

- (i) Supporting documentation that the carrier does or will advertise the availability of the above-mentioned services and their associated charges in a media of general distribution and include Lifeline and Link-Up services;
- (ii) Provide Lifeline and Link-Up tariffs which conform to the provisions of Rule 9.113 of the *Commission's Public Utilities Rules of Practice and Procedure*;
- (iii) The identity and telephone number of a designated representative with authority to resolve customer service, quality of service and/or Lifeline or Link-Up inquiries;
- (iv) Written commitment to offer all supported services throughout its designated service area; and
- (v) Written statement that the carrier is in full compliance with all Commission orders and Commission rules and regulations. (Carrier must be in good standing with the Commission.)

(c) Manner of Service

ETC applicants shall make specific commitments to provide service to requesting customers in the service areas for which such applicant is designated as an ETC. In providing supported services, ETC applicants shall provide immediate service to prospective customers within its existing network. When the prospective customer lies within the carrier's service area, but outside of its existing network coverage, the ETC shall take the following steps in descending order, as applicable:

¹ The ETC checklist is not to be used as a replacement for carrier obligations under Rule 7, Certificate Proceedings, of the *Commission's Public Utilities Rules of Practice and Procedure*. All ETC applicants are expected to initially meet the requirements of Rule 7 before receiving consideration for designation as an ETC under the requirements detailed herein.



- (i) Determine whether the requesting customer's equipment can be modified or replaced to provide service;
- (ii) Determine whether a roof-mounted antenna or other equipment can be deployed to provide service;
- (iii) Determine whether adjustments can be made at the nearest facility to provide service;
- (iv) Determine whether a cell extender, repeater or other similar equipment can be employed to provide service;
- (v) Determine whether there are any other adjustments to network or customer facilities that can be made to provide service;
- (vi) Determine whether it can offer resold services from another carrier's facilities to provide service;
- (vii) Determine whether additional facilities can be constructed to provide service and evaluate the costs and benefits of using high cost support to serve the number of customers requesting service through such additional facilities. If there is no possibility of providing service short of construction of new facilities, the ETC will report this fact to the Commission, along with the projected costs of construction and the ETC's determination as to whether the request for service is reasonable and whether high cost funds should be expended on the request; and
- (viii) Steps (i - vi) of this procedure must be completed by the service provider within thirty (30) days of receiving a request for service. Should the provider find it necessary to proceed to Step (vii), the provider will promptly notify the Commission and complete the analysis within an additional fifteen (15) days.

(d) Initial Filing Requirements

At the time of an ETC's filing for designation, it shall be expected to submit a Universal Service Fund Utilization Plan (USF Utilization Plan) which must contain the amount of universal funds the ETC applicant expects to receive in the following year and provide:²

- (i) Proposed use of the funds;
- (ii) Build-out plan for areas where facilities do not yet exist;
- (iii) Explanation of how universal service funds will be used to improve network coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high cost support; and
- (iv) Map(s) depicting existing facilities, coverage area and planned sites of new facilities upon designation as an eligible carrier.

(e) Ongoing Filing Requirements

In addition, ETC applicants receiving designation shall be expected to submit the following information to the Commission on an ongoing basis:

- (i) Quarterly progress reports detailing the number of service requests in the licensed area which go unfulfilled and the basis for refusal of service;
- (ii) Quarterly progress reports detailing the amount of universal service funds received for the quarter and updates of the amount of the projects previously approved by the Commission in its USF Utilization Plan³; and
- (iii) Quarterly progress reports detailing the number of consumer complaints per 1,000 handsets or access lines, whichever is applicable.

² This information should be furnished on a wire center-by-wire center basis throughout its designated service area. Where it is not possible to provide such detailed information by wire center, this information must be furnished on a county-by-county basis.

³ This information should be furnished on a wire center-by-wire center basis.

(f) **Adequate Financial Resources**

- (i) ETC applicants shall demonstrate financial stability by providing all financial documentation that is required pursuant to Appendix "A," Schedule 1, of the *Commission's Public Utilities Rules of Practice and Procedure*; and
- (ii) ETCs shall file annual reports with the Commission as required under Rule 16.101 of the *Commission's Public Utilities Rules of Practice and Procedure*.

2. **Ability to Remain Functional in Emergency Situations**

(a) **Emergency Operations Plan**

ETC applicants shall demonstrate an ability to remain functional in emergency situations. ETCs shall file a current emergency operations plan or other designated emergency plan for the Commission to use in determining whether this requirement has been met. In the event an ETC does not have such a plan in place, the Commission shall evaluate the carrier on a case-by-case basis to determine whether it meets this requirement, considering a wide range of factors including, but not limited to, whether the carrier:

- (i) Has a reasonable amount of backup power to ensure functionality without an external power source;
- (ii) Is able to reroute traffic among damaged facilities; and
- (iii) Is capable of managing traffic spikes resulting from emergency situations.

(b) **Outage Reporting**

ETCs shall adhere to the FCC reporting requirements concerning outages and shall provide copies of such reports to the Commission, upon request.

3. **Satisfaction of Consumer Protection and Service Quality Standards**

ETC applicants shall demonstrate commitment to meeting consumer protection and service quality standards.

(a) **Wireless ETCs**

Wireless ETCs shall meet this requirement by:

- (i) Compliance with the CTIA Consumer Code;
- (ii) Submission to the Commission the number of consumer complaints per 1000 handsets for each quarter; and
- (iii) Other presented commitments will be evaluated on a case-by-case basis.

(b) **Wireline ETCs**

Wireline ETCs shall meet this requirement by:

- (i) Compliance with the *Commission's Rules and Regulations Governing Public Utility Service*;
- (ii) Compliance with Commission designated service quality standards applicable for each carrier;
- (iii) Submission to the Commission the number of consumer complaints per 1000 access lines for each quarter;
- (iv) Compliance with all applicable federal standards and requirements; and
- (v) Other presented commitments will be evaluated on a case-by-case basis.

4. **Local Usage Plan**

ETC applicants will have the burden of showing how its local usage calling plan is "comparable" but not "identical" to those offered by the ILECs in the proposed service area. Further, all ETCs will be required to offer a minimum of one affordable offering similar to an ILEC's basic local service offering for low income customers. ETC applicants must submit

their specific local service offerings at the time of their filing. The Commission will review each ETC applicant's local usage plans on a case-by-case basis. However, it is mandatory that each ETC commit to furnish Lifeline and Link-Up service to qualified consumers. Pursuant to the above, the Commission, in the formulation of minimum local usage plans will also consider:

- (a) The size of the local calling scope compared to that of the incumbent;
- (b) Calling plans that include some free minutes;
- (c) Whether carriers offer unlimited free minutes to government, social service, health facilities, educational institutions and emergency numbers; and
- (d) Any other factors deemed material by the Commission.

5. **Equal Access**

ETC applicants shall acknowledge in writing that it may be required to provide equal access to long distance carriers. This would be required in the event that no other ETC is providing equal access within the service area, subject to that provider's obligations under federal law.

B. Public Interest Analysis

1. **Goals**

The Commission shall consider whether each carrier has satisfied "the public interest criteria" in both rural and non-rural areas, on a case-by-case basis, considering the general goals of:

- (a) Preserving and advancing universal service;
- (b) Ensuring the availability of quality telecommunications services at just, reasonable and affordable rates; and
- (c) Promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high cost areas.

2. **Benefits of Increased Consumer Choice**

The Commission shall consider the benefits of increased consumer choice that ETC applicants provide to consumers in rural and high cost areas. Each ETC applicant must prove there exists specific choices of service offerings in both rural and high cost areas. Further, the Commission reserves the option of addressing issues relevant to the public interest that each unique ETC application may present to this Commission. The Commission shall evaluate each carrier on a case-by-case basis to determine if it meets this requirement.

3. **Unique Advantages and Disadvantages of Competitors' Service Offerings**

The Commission shall consider the advantages and disadvantages of a competitor's service offerings as follows:

- (a) Increased mobility;
- (b) Reduced or eliminated toll charges;
- (c) The availability of services such as voice mail, call waiting and call forwarding;
- (d) Dropped call rates and inadequate service coverage;
- (e) Showing of an offering of lesser charges to potential customers;
- (f) Ensuring the ability of rural customers to have access to features and premium services largely promoted in urban areas; and
- (g) Other factors deemed relevant by this Commission, on a case-by-case basis.

4. **Impact of Designation upon the Universal Service Fund**

The Commission shall consider the impact of designation on the universal service fund on a case-by-case basis, considering, among other things, the per-line support received by the ILEC.

5. Creamskimming Potential

The Commission shall analyze the potential for creamskimming for ETC applicants only if the carrier seeks designation below the service area level of an rural ILEC. The Commission shall consider a number of factors, on a case-by-case basis, to determine whether there is a potential for creamskimming including, but not limited to, the following:

- (a) Examining the degree of population density disparities among wire centers within rural service areas;
- (b) The extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area;
- (c) Whether the ILEC has disaggregated its support at a smaller level than the service area; and
- (d) Any other factors deemed relevant by the Commission.

C. Administrative Requirements for ETC Designation Proceedings

1. Service Requirements

All carriers which submit a filing for ETC status must, concurrently with its filing, serve notice of their filing upon each previously designated ETC, including each ILEC/ETC in the affected service area. The ETC applicant must also file a certificate verifying the date that this service was provided.

2. Provisions Which will be Included in Orders

Future ETC designation orders adopted by the Commission will include the following provisions:

- (a) Name of each ILEC study area in which an ETC has been designated;
- (b) Clear statement of whether the ETC has been designated in all or part of each ILEC's study area;
- (c) List of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) Code;
- (d) Identification of any required follow-up filings or other conditions imposed prior to the ETC designation being final; (the Commission will notify USAC when said conditions have been met);
- (e) Provision of any other relevant and necessary information; and
- (f) Effective date of the order.

II. Annual Reporting and Certification Requirements

A. Annual Filing Requirements

The filing requirements shall be submitted on or before June 1st of each calendar year for the Commission's use in complying with the certification requirements set forth by the FCC.

1. USF Utilization Plan

The required USF Utilization Plan shall include the amount of universal funds the carrier expects to receive in the following year and shall address the following items, as applicable:²

- (a) Carrier's proposed use of the funds;
- (b) Build-out plan for areas where facilities do not yet exist;
- (c) Explanation of how universal service funds will be used to improve network coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high cost support; and
- (d) Map(s) depicting existing facilities, coverage area and planned sites of new facilities.

2. Certification Requirements

The ETC shall annually certify the following:

- (a) The ETC is able to function in an emergency;
- (b) The ETC is complying with applicable service quality standards and consumer protection rules;
- (c) The ETC is complying with the FCC reporting requirements concerning outages;
- (d) The ETC is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas;
- (e) The ETC acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area subject to that provider's obligations under federal law; and
- (f) The ETC is advertising the required supported services throughout its service area. (Supporting advertising documentation must be attached to the certification).

B. Annual Reports

ETCs shall file annual reports with the Commission as required under *Rule 16.101 of the Commission's Public Utilities Rules of Practice and Procedure*. Annual Reports must be filed with the Commission on or before May 1st of each calendar year.

C. Quarterly Progress Reports

ETCs shall submit quarterly progress reports, which detail the following information:

- (a) The amount of universal service funds received for the quarter and updates of the amount of the projects previously approved by the Commission in its USF Utilization Plan;³
- (b) The number of service requests in the licensed area which go unfulfilled and the basis for refusal of service; and
- (c) The number of consumer complaints per 1000 handsets or access lines, whichever is applicable.